

10/771,721

REMARKS

The present Response is submitted in reply to the Official Action of September 20, 2005 and the Applicant herein petitions for a two (2) month extension of term, attached hereto, thereby extending the term for response to and including **February 20, 2006**.

Claims 28-54 are presently pending in the Application, of which claims 32, 33, 36 and 39 have been withdrawn from consideration pursuant to a restriction requirement as being drawn to a non-elected species.

First, the Examiner objects to claim 35 for an informality therein and rejects claim 45 under 35 U.S.C. § 112, second paragraph, as being indefinite for the reasons noted in the official action. The rejected claims are accordingly amended, by the above claim amendments, and the presently pending claims are now believed to particularly point out and distinctly claim the subject matter regarded as the invention, thereby overcoming all of the raised § 112, second paragraph, rejections. The entered claim amendments are directed solely at overcoming the raised indefiniteness rejection(s) and are not directed at distinguishing the present invention from the art of record in this case.

It will also be noted that the Applicant entered new claims 55 and 56 to preserve the subject matter of amended claim 45, and of claim 28 which are amended, as discussed herein below, and that the addition of new claims 55 and 56 does not added any new subject matter.

Next, the Examiner rejects claims 28-31, 34, 35, 37, 38 and 40-54 over the cited prior art and upon other grounds, including obviousness type double patenting, discussed herein below.

First, considering the claim rejections that include claim 28, which is the sole independent claim of this Application, the Examiner rejects claims 28-30, 35, 37, 38, 40-44, 48, 51 and 54 under 35 U.S.C. § 102(b) over Fisher '188 and rejects claims 28, 34, 40-44, 51

and 54 under 35 U.S.C. § 102(b) over Heinzl et al. '407. The Applicant acknowledges and respectfully traverses the raised rejections in view of the following remarks.

First considering the present invention in general, the present invention is directed to a transmission gear set for use, for example, in a front cross longitudinal application within a vehicle, which normally requires a double clutch gear set, which are usually only shiftable by an automatic shifting device. The gear set of the present invention, however, and in fundamental contrast from the prior art, requires only a single clutch and, as discussed below, a single input shaft. In addition, an implementation of the present invention as recited, for example, in dependent claims 52 and 54, allows the single clutch gear set to be manually shifted by a conversion device.

As apparent from the claim amendments entered above, the independent claim 28 and certain of the dependent claims are amended to more explicitly and clearly focus on these aspects of the present invention. As such, the present invention as recited in independent claim 28, as amended herein, is directed to a six-gear or seven-gear vehicle transmission (1, 30) having a single clutch (K1), the input side of which is connected with a drive shaft (2) of a prime mover and the output side (3) with a single input shaft (4). The transmission includes two countershafts (5, 6) upon which are rotatably supported gear wheels designed as idler wheels (7, 8, 9, 10, 15, 16, 17, 34, 35, 36), gear wheels designed as fixed wheels (11, 12, 13, 14, 33, 37) non-rotatably situated upon the single input shaft (4) and in tooth contact with said idler wheels (7, 8, 9, 10, 15, 16, 17, 34, 35, 36), coupling devices (22, 23, 24, 25, 31, 32) that are non-rotatably and axially movably supported upon said two countershafts (5, 6). The coupling devices are movable means of setting devices, the same as the one output gear wheel (18, 19) fastened on the respective countershaft (5, 6) and are in tooth contact with one toothing (20) on a differential transmission (21). Each pair of gear positions are disposed in a shifting gate of one of an H- or multi-H-shifting gate (G1-G2; G3-G4; G5-G6; G7-RG) and

are associated in the transmission with two different coupling devices (22, 23, 24, 25, 31, 32), wherein of the fixed wheels (11, 12, 13, 14, 33, 37) situated upon the single input shaft (4), at least two fixed wheels (12 or 37, 13, 14) are in tooth contact with each two idler wheels (8, 15; 35, 36; 9, 16; 10, 17).

Referring therefore to the cited prior art, and first referring to Fisher `188, it is very apparent from, for example, Fig. 2 and column 3, lines 11-15, that the Fisher `188 transmission requires both two clutches (18,22) and two coaxial input shafts (20, 24).

Referring to Heinzl et al. `407, it is very apparent from, for example, Figs. 1-3 and column 5, lines 13-17, which are common to all implementations of the Heinzl et al. `407 transmissions, that the Heinzl et al. `407 transmission also requires both two clutches (K1,K2) and two coaxial input shafts (12,14).

As a consequence, neither Fisher `188 nor Heinzl et al. `407 in any way teaches or suggests that a transmission of the general nature described therein, or that a transmission like that of the present invention, could be constructed using only a single clutch and a single input shaft, and it is apparent that there is no permissible combination of Fisher `188 with Heinzl et al. `407 or Heinzl et al. `407 with Fisher `188 that could yield the necessary teaching required by case law to render the claims obvious.

It is, therefore, the belief and position of the Applicant that neither Fisher `188 nor Heinzl et al. `407 in any way teaches or suggests the present invention, as recited in claim 28, to those of skill in the relevant arts under the requirements and provisions of 35 U.S.C. § 102 or 35 U.S.C. § 103. The Applicant, therefore, respectfully requests that the Examiner reconsider and withdraw all rejections of claim 28 in view of Fisher `188 and/or Heinzl et al. `407 under either, or both, 35 U.S.C. § 102 and 35 U.S.C. § 103, and allow claim 28 as amended herein above.

It will be noted that claims 29-31, 34, 35, 37, 38 and 40-54 all depend from claim 28, as do new claims 55 and 56 which are added to accommodate changes in the recitations of claims 28 and 45 as a result of the amendments discussed above, and thereby incorporate all recitations and limitations of claim 28. As a consequence, claims 29-31, 34, 35, 37, 38 and 40-56 are patentably distinguished over either, or both, Fisher `188 and/or Heinzl et al. `407 for the same reasons that claim 28 is patentably distinguished over that cited prior art. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw all rejections of claims 29-31, 34, 35, 37, 38 and 40-56 over Fisher `188 and/or Heinzl et al. `407, under 35 U.S.C. §§ 102 and 103, and allow claims 29-31, 34, 35, 37, 38 and 40-56.

Continuing with the above discussion of the transmission of the present invention as a single clutch, single input shaft transmission with respect to the remainder of the cited prior art, it will be seen that Kobayashi `168, for example, at Figs. 1, 6-9, and 12-14, and at column 5, lines 12-15, and column 6, lines 3-9, also describes a transmission requiring two clutches and, in fact, of plurality of clutches, and two input shafts.

Hall III `705 also describes, for example in the Abstract, in Fig. 1 and at column 1, lines 62-66, a transmission that requires two input shafts (18,20) and two input shafts (22,24).

Pels et al. `247, in Figs. 2, 2a, 2b, 2d, and 3-11, and at column 19, lines 15-33) similarly describes a transmission requiring two inputs shafts, such as 2a and 2b, and two clutches, such as 5 and 6. It must be also noted that Pels et al. `247 is distinct from both the present invention and all of the other cited references in describing a transmission having inputs from two separate power sources, that is, a combustion engine and an electric motor. As a result, the entire arrangement and operation of the Pels et al. `247 transmission is fundamentally different from both that of the present invention and those of the other cited prior art references, and to such an extent that the Pels et al. `247 is not a valid reference with respect to the present

invention and it is respectfully submitted most probably could not be validly combined with any of the other cited prior art references.

Lastly, Smith `483 describes, for example in the Abstract, in Fig. 1, and at column 3, lines 64-69 and column 5, line 58 through column 6, line 12, a transmission having multiple clutches and two inputs shafts, one of which also serves as a through shaft.

In summary, therefore, none of the cited prior art references, including Fisher `188, Heinzl et al. `407, Kobayashi `168, Hall III `705, Pels et al. `247 and/or Smith `483, in any way teaches, describes or suggests a transmission according to the present invention, which has a single clutch and a single input shaft, under the requirements and provisions of either 35 U.S.C. §§ 102 and/or 103. In a like manner, and there is no combination of these references that could or does teach, suggest or disclose the present invention under the requirements and provisions of 35 U.S.C. § 102 or 35 U.S.C. § 103.

The present invention, as recited in claim 28, is therefor fully and patentably distinguished over and from the teachings and suggestions of Fisher `188, Heinzl et al. `407, Kobayashi `168, Hall III `705, Pels et al. `247 and/or Smith `483, taken singly or in any permissible combination, under the requirements and provisions of 35 U.S.C. § 102 and 35 U.S.C. § 103. The Applicant, therefore, respectfully requests that the Examiner reconsider and withdraw all rejections or potential rejections of the present invention, as recited in claim 28, and allow claim 28.

Also, it is noted that the Examiner rejects claim 31 under 35 U.S.C. § 103(a) over Fisher `188 and Heinzl et al. `407, claims 45 and 46 under 35 U.S.C. § 103(a) over Fisher `188 and Heinzl et al. `407 in view of Kobayashi `168, claim 47 under 35 U.S.C. § 103(a) over Fisher `188 and Heinzl et al. `407 in view of Hall, III `705, claims 49 and 50 under 35 U.S.C. § 103(a) over Fisher `188 and Heinzl et al. `407 in view of Pels et al. `247, and claims 52 and 53 under 35 U.S.C. § 103(a) over Fisher `188 and Heinzl et al. `407 in view

of Smith `483. The Applicant acknowledges and respectfully traverses the raised rejections in view of the following remarks.

As discussed herein above, the rejected dependent claims, that is, claims 29-31, 34, 35, 37, 38 and 40-54 all depend from claim 28, as do new claims 55 and 56 which are entered to accommodate changes in the recitations in claims 28 and 45 as a result of the amendments discussed above, and thereby incorporate all recitations and limitations of claim 28. As a consequence, it is respectfully submitted that claims 29-31, 34, 35, 37, 38 and 40-56 are patentably distinguished over the teachings and suggestions of Fisher `188, Heinzl et al. `407, Kobayashi `168, Hall III `705, Pels et al. `247 and/or Smith `483, taken singly or in any permissible combination and under the requirements and provisions of 35 U.S.C. § 102 and 35 U.S.C. § 103, for the same reasons that claim 28 is patentably distinguished over the cited prior art. The Applicant, therefore, respectfully requests that the Examiner reconsider and withdraw all rejections of claims 29-31, 34, 35, 37, 38 and 40-56 over Fisher `188, Heinzl et al. `407, Kobayashi `168, Hall III `705, Pels et al. `247 and/or Smith `483, taken singly or in any permissible combination and under the requirements and provisions of 35 U.S.C. § 102 and 35 U.S.C. § 103, and allow claims 29-31, 34, 35, 37, 38 and 40-56.

The Applicant notes and acknowledges with regard to the above discussed rejections of dependent claims 29-31, 34, 35, 37, 38 and 40-54 that the Examiner, in raising these rejections, relies upon the teachings of Fisher `188 and Heinzl et al. `407 in combination with selected ones of Kobayashi `168, Hall III `705, Pels et al. `247 and Smith `483. As discussed above, however, it is the Applicant's belief and position that the patentable distinctions of claim 28 over Fisher `188 and Heinzl et al. `407 also distinguish dependent claims 29-31, 34, 35, 37, 38 and 40-56 over the combinations of Fisher `188 and Heinzl et al. `407 with the other prior art references.

The Applicant also respectfully disagrees, however, with the Examiner's interpretations of Kobayashi `168, Hall III `705, Pels et al. `247 and Smith `483, both individually and in combination with Fisher `188 and Heinzl et al. `407 for a number of reasons. For example, and as discussed above, the structure and arrangement of elements in the transmission of the present invention requires only one clutch and only one input shaft. In complete contrast, all of the transmissions described by Fisher `188, Heinzl et al. `407, Kobayashi `168, Hall III `705, Pels et al. `247 and Smith `483 require two clutches and two input shafts, although these elements are arranged differently among the references.

It is apparent from an examine of the figures in the respective references, for example, that this fundamental difference between a transmission of the present invention and the transmissions of the applied prior art references result in corresponding basic distinctions in the structure and arrangement of the internal elements in each transmission.

As discussed above, however, the transmission of the present invention is completely distinguished over and from the teachings of Fisher `188, Heinzl et al. `407, Kobayashi `168, Hall III `705, Pels et al. `247 and Smith `483 by the aspects of the present invention discussed above with regard to claim 28 as well as the dependent claims. The Applicant, therefore, believes that a detailed discussion of these further distinctions, between the present invention and the various applied prior art references, if any should be deemed necessary or desirable, should be held in abeyance until after the above discussed fundamental distinctions between the present invention, as recited in the presently pending claims and the prior art references, is fully reconsidered by the Examiner.

It must be understood, however, that a delay in presenting arguments pertaining to these further distinctions between the present invention and the prior art must not be understood or taken as any form of admission or agreement by the Applicant with the

Examiner's positions, and the Applicant expressly reserves such further considerations and arguments until the same appears necessary or desirable.

Lastly, the Examiner provisionally rejects claims 28-31, 34, 35, 37, 38 and 40-53 under the judicially created doctrine of obviousness-type double patenting over certain claims of co-pending Application Serial No. 10/771,723, which is assigned to the same assignee as the present Application. The Applicant thanks the Examiner for indicating that a timely filed Terminal Disclaimer, in compliance with 37 CFR 1.321(c), would overcome the raised double patenting rejection provided that the conflicting application or patent is shown to be commonly owned with this application.

In view of this indication, a Terminal Disclaimer, in compliance with 37 CFR 1.321(c), is submitted along with the associated official fee. The United States Patent Office's records shown the common ownership of the above identified application and the conflicting application or patent. In view of the foregoing, it is respectfully submitted that the raised double patenting rejection should be withdrawn at this time.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the Fisher `188, Heinzl et al. `407, Kobayashi `168, Hall, III `705, Pels et al. `247 and/or Smith `483 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at

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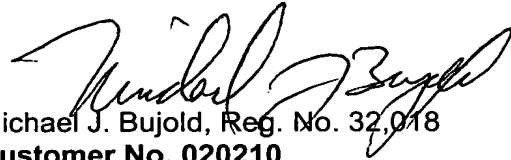
this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



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